

(A) The scope limitations in section 4.02 of Rev. Proc. 99-49 shall not apply;

(B) The timely duplicate filing requirement in section 6.02(2) of Rev. Proc. 99-49 shall not apply; and

(C) If the method of accounting for determining premiums earned is an issue under consideration within the meaning of section 3.09 of Rev. Proc. 99-49 as of January 5, 2000, then section 7.01 of Rev. Proc. 99-49 shall not apply.

(12) *Effective date.* Paragraphs (a)(3) through (a)(11) of this section are applicable with respect to the determination of premiums earned for taxable years beginning after December 31, 1999.

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Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 23, 1999.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00-13 Filed 1-5-00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 177

[CGD01-99-193]

Drawbridge Operation Regulations: Saugus River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District has issued a temporary deviation from the existing drawbridge regulations for the Fox Hill SR107 Bridge, mile 2.5, across the Saugus River between Saugus and Lynn, Massachusetts. This deviation allows the bridge owner to open the bridge only three times each day for vessel traffic. This deviation is necessary to facilitate repairs to replace structural steel, floor beams and the wearing surface at the bridge.

DATES: This deviation is effective from January 3, 2000 to March 2, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223-8364.

SUPPLEMENTARY INFORMATION: The Fox Hill SR107 Bridge has a vertical clearance of 6 feet at mean high water and 16 feet at mean low water.

The existing regulations for the Fox Hill SR107 Bridge in 33 CFR 117.618(c) require the bridge to open on signal;

except that, from October 1 through May 31, 7 p.m. to 5 a.m., daily, and all day on December 25 and January 1, the draw shall open as soon as possible, but not more than one one-hour, after notice is given to the drawtenders either at the bridge during the time the drawtenders are on duty or by calling the number posted at the bridge.

The bridge owner, Massachusetts Highway Department (MHD), asked the Coast Guard to allow the bridge to open on signal, only, at 6 a.m., 2 p.m., and 6 p.m., from January 3, 2000, through March 2, 2000.

The purpose of this temporary deviation is to facilitate necessary repairs to the bridge. Structural steel, floor beams, and the bridge wearing surface will be replaced during the 60 day repair period. The bridge can not open for vessel traffic during the replacement of the above components. Vessels that can pass under the bridge without an opening may do so at all times.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation is authorized under 33 CFR 117.35.

Dated: December 17, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 00-257 Filed 1-5-00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154 and 155

[USCG-1998-3350]

Review of Cap Increases; Response Plans for Marine Transportation-Related (MTR) Facilities and Tank Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of decision.

SUMMARY: Coast Guard response plan regulations contain requirements for on-water oil recovery capacity (referred to as caps). These caps were scheduled to increase by 25 percent on February 18, 1998, provided the Coast Guard completed a review of the cap increases. The Coast Guard has completed its review and the 25 percent increase for on-water mechanical recovery will take effect 90 days from the date of this notice. The Coast Guard will consider a 2003 cap for mechanical on-water

removal capability and requirements for other removal technologies in a subsequent notice of proposed rulemaking.

DATES: The scheduled cap increase for on-water mechanical recovery requirements will take effect on April 5, 2000.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice (USCG-1998-3350). The Response Plan Equipment Cap Review (Cap Review) is part of the docket and is available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>. The Cap Review is also available for examination on the Vessel Response Plan Internet site at <http://www.uscg.mil/vrp>.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call Lieutenant Commander John Caplis, Office of Response (G-MOR), Coast Guard, telephone 202-267-6922 or by e-mail at JCaplis@comdt.uscg.mil. For questions on viewing materials in the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

In 1996, the Coast Guard published two final rules entitled "Vessel Response Plans" (61 FR 1052, January 12, 1996) and "Response Plans for Marine Transportation-Related Facilities" (61 FR 7890, February 29, 1996). Those rules finalized the 1993 interim rules (58 FR 7330, February 5, 1993, and 58 FR 7376, February 5, 1993, for Marine Transportation-Related Facilities and Vessels, respectively) and are located in the Code of Federal Regulations (CFR) in 33 CFR parts 154 and 155. 33 CFR 154.1045(m) and 155.1050(o) contain requirements for on-water oil recovery capacity (referred to as caps) that an owner or operator must ensure is available, through contract or other approved means, in planning for a worst case discharge. These caps were established taking into account 1993 technology, deployment capability, and availability of response resources.

The 1993 and 1996 rules established a 1998 cap, a 25 percent increase from the 1993 levels, as a target for increasing response capabilities. This increase was endorsed by the Vessel Response Plan Negotiated Rulemaking Committee as an incentive to expand response

capabilities within the United States to an obtainable and desirable level by 1998. The Coast Guard concurred with the recommendation from the Committee, adopted for both vessel and facility rules, to review the proposed cap increase before the increase would be implemented to determine if it remains practicable.

On January 27, 1998, we published a "Request for Comment" notice (63 FR 3861) with regard to the Cap Review and stated that the 1993 caps would remain in effect pending the results of that review and that the cap increases as originally scheduled would not be implemented until the review was complete.

On June 24, 1998, we published a Notice of Meetings (63 FR 34500) that announced three public workshops to solicit comments on the potential changes to the equipment requirements within the response plan regulations (33 CFR parts 154 and 155) for mechanical recovery, dispersants, and other spill removal technologies. These workshops were held in Oakland, CA, on July 24, 1998, with 55 attendees; in Houston, TX, on August 19, 1998, with 71 attendees; and in Washington, DC, on September 16, 1998, with 49 attendees. We completed the Response Plan Equipment Cap Review (Cap Review) in May 1999, placed it in the docket and made it available on-line on July 26, 1999. The Cap Review can be viewed on the Internet at the sites listed in the **ADDRESSES** section.

Discussion of Comments

The Coast Guard received 25 written comments in response to a "Request for Comment" published in the **Federal Register** on January 27, 1998 (63 FR 3861). In addition, we recorded 41 verbal comments regarding mechanical recovery caps in the summaries for three public workshops which were conducted in the summer of 1998. We received 37 letters in response to the workshops. These letters were placed in the public docket. In general, public comment regarding an increase in the mechanical recovery equipment is divided, with numerous comments received both for and against such an increase.

Current Equipment Inventories

Five comments stated that the cap increase is practicable since equipment inventories already exceed the increased cap requirements. We agree that equipment inventories are sufficient throughout the nation to support an increase in the equipment required to be ensured available by any individual

planholder. The Cap Review indicates that only a few port areas do not have aggregate equipment stockpiles significantly in excess of the increased cap requirements, and that from an availability standpoint, the caps are practicable.

Five comments suggested that the cap increase was not necessary because the additional mechanical recovery equipment already exists and is sufficient to respond to most anticipated spills. We disagree that the mere existence of surplus equipment in the regional response inventories negates the need for an increase in an individual planholder's equipment requirements. The Oil Pollution Act of 1990 (Pub. L. 101-380) (OPA 90) directed that response plans should prepare for, to the maximum extent possible, a response to a worst case discharge. Scheduled increases in recovery capability were intended and remain necessary to close the gap between the equipment required to be ensured available by a planholder and that amount which would be necessary to respond to a worst case discharge. The equipment requirements, however, should not be elevated to the entire worst case discharge amount simply because aggregate regional inventories are now available at those levels. This is because the capped amounts also attempt to discount for operational considerations, such as limitations regarding the effective deployment of equipment during the first 72 hours of the response. Total availability within regional equipment inventories is only one of many factors that must be considered in determining what is a practicable equipment cap.

Two comments stated that the cap increases are not necessary because free market forces have generated the large equipment inventories as a result of competition between the oil spill removal organizations (OSROs). We agree that competition between OSROs, who have individually acquired enough resources each to meet the cap requirements, has resulted in the accumulation of large aggregate equipment inventories in each regional and port area. We determined that these accumulations are suitable and necessary, as the caps rely on these excess stockpiles to come into play in the event of a catastrophic spill, such as a worst case discharge from a large tankship. The cap requirements reflect the limitations of a planholder's ability to deploy and effectively manage equipment during the initial phase of a response. As such, the capped equipment tiers are designed to ensure

an increasing availability of equipment during that first 72 hours of a response. If a worst case discharge were to occur from a large tank vessel or facility, however, the equipment needed to respond past that initial 72-hour period is likely to exceed the cap levels. As spill management team and incident command systems are firmly established, their ability to effectively deploy and manage equipment should also surpass the capped levels. The response will need to draw upon those aggregate inventories in excess of the caps to ensure the response can continue to expand in scope beyond that initial 72-hour period.

Five comments supported the cap increase, stating that the equipment has already been obtained in anticipation of the scheduled increase, and that a failure to implement the new requirements will result in additional equipment being sold off or put out of service. We agree that a failure to implement a cap increase may result in declining equipment inventories. If the equipment caps are not increased, economic pressures may force a sell-off of un-mandated equipment which may result in a lessening of our overall response capability.

Three comments stated that the evaluation of equipment stockpiles must account for the fact that tiered response requirements allow equipment to be brought in from other regions and that this "cascading" of equipment may strip the providing area of critical response capability. This was cited as a major concern where ports and stockpiles are separated by hundreds of miles. We acknowledge that the cascading of equipment out of a region may impact the ability of a particular OSRO or planholder to respond in that port. This possibility reinforces the need to maintain aggregate levels of response equipment within a port area that significantly exceed the cap requirements. These surplus inventories will ensure that a viable response capability is retained within one region when some of its resources are cascaded into another region in response to a discharge.

Four comments stated that the equipment required under the current cap has been sufficient to respond to all spills since the passage of OPA 90 and is also sufficient to respond to the current risk of spills. Two comments stated the Cap Review should evaluate responses to actual incidents in order to determine whether more response equipment is necessary or not. The Coast Guard has the responsibility for issuing regulations that require a

planholder to respond, to the maximum extent possible, a worst case discharge. The fact that a worst case discharge from a large tank vessel (such as an ultra-large crude carrier) or large tank facility has not occurred in the United States since the passage of OPA 90 does not mean that such a discharge could not happen. Nor does it change the intent of Congress that industry develop response plans that prepare for, to the maximum extent possible, a worst case discharge. While spill tendencies since the passage of OPA 90 do show a decline in large oil spill events, the risk of future spills still includes the contingency of a worst case discharge. Evaluating the cap increase with regard to the smaller incidents that have occurred since the passage of the OPA 90 does not satisfy the intent of Congress in preparing for a worst case discharge.

One comment stated that the cap increase must be based upon a determination that the resources currently required are not sufficient to remove a worst case discharge. One comment stated the caps should be increased because the current cap levels represent a very small percentage of the overall capability required to respond to a worst case discharge from a large tankship. The Cap Review evaluated the scheduled increase to determine if it required resources that exceeded the amount necessary to respond to a worst case discharge. This evaluation was based on the planning assumptions and calculations contained within 33 CFR part 154, Appendix C and 33 CFR part 155, Appendix B, and compared the increased caps against the worst case discharge volumes found within the Area Contingency Plans throughout the country. The comparison revealed that the increase is still far below the levels of equipment that would be necessary to respond to a worst case discharge (see Cap Review Tables 3–9, A–C for more information).

Regional, State, and Local Issues

Two comments stated that the caps should be consistent with State requirements. One comment stated that California has already mandated a 25 percent increase in State equipment caps. The State of California Office of Spill Prevention and Response (OSPR) commented that a 25 percent increase in the planning standards for on-water oil recovery volumes was both feasible and necessary to meet the best achievable protection of the California coast. The State of Alaska Department of Environmental Conservation (ADEC) has also commented that their State

requirements exceed the existing cap requirements and that the Federal caps should increase in order to strengthen and stabilize equipment inventories. Another comment stated that the U.S. Environmental Protection Agency (EPA) has already implemented the 25 percent increase in the caps for the OPA 90 response plans required under their regulations. We agree that response requirements should be as consistent as possible across Federal agency and State requirements. Increasing the national response standards for caps will promote consistency between EPA, Coast Guard, and State cap requirements. The State of California OSPR, Alaska ADEC and the EPA have all commented that the caps should increase, both for reasons of ensuring consistency, as well as for ensuring an adequate level of national preparedness. We will continue to work with the Federal and State agencies to ensure consistency and as much harmony between requirements as possible.

Three comments recommended that the mechanical recovery equipment caps should be flexible to accommodate local priorities and concerns and should be developed regionally. Another comment stated that the cap increases should not be applicable in areas shown to have lower levels of risk. We disagree. The equipment caps were designed to establish on a national level a minimum baseline for response equipment that would be ensured available for any given location. Similarly, the cap increase was designed to raise the baseline to provide consistency on a national basis. The use of a national standard does not impede the development of response inventories that are reflective of regional and local needs or risks. Market forces will shape a region's response equipment inventory irrespective of the regulatory baseline. The Gulf Coast region is an example where market forces have built a substantially larger stock of equipment than most other regions of the country. This larger equipment stockpile is also reflective of the higher regional risk of an oil spill. Conversely, the response plan rules allow for situations where market forces dictate that the sustainable level of response equipment in an area falls below the national baseline. Under these circumstances, planholders may request an alternative planning criteria from the Coast Guard.

One comment suggested that Area Committees should establish the equipment requirements for each region. We disagree. The National Contingency Plan charges Area Committees with many responsibilities as outlined in the

Section 311(j)(4) of the Federal Water Pollution Control Act (Pub. L. 92–500). These responsibilities include, but are not limited to, developing an area contingency plan, response strategies and procedures, joint contingency plans, agency responsibilities, and the identification of sensitive resources. Area Committee's do not have the responsibility for establishing response plan equipment requirements, nor have they been delegated that authority by the President under the Federal Water Pollution Control Act.

One comment stated that the Coast Guard should evaluate the net environmental benefit in each regional area to determine if any equipment increases are necessary. Before the adoption of the vessel and facility response plan requirements, we conducted a regulatory assessment that determined an acceptable level of benefits would result from an increase in the equipment caps as a national planning standard. In addition, the response plan rules charge the Coast Guard with conducting a review to determine whether an equipment cap increase is practicable. Our determination of practicability has included an evaluation of technological, operational, and economic feasibility. Net environmental benefit studies are better suited for evaluating area specific response strategies and are beyond the scope of the analysis needed to evaluate the cap increase as a national planning standard.

One comment stated that the Coast Guard should use the Preparedness for Response Exercise Program (PREP) as an evaluation tool in assessing the need for increased equipment caps at local and regional levels throughout the United States. We disagree. PREP was developed as a workable, voluntary program that would facilitate the planholders' compliance with the exercise requirements of OPA 90. PREP was designed to test preparedness of the Area, vessel, or facility level, but was not designed to establish regional or national equipment requirements. While government-led exercises do occasionally test an area contingency plan's worst case discharge scenario, the resultant tabletop exercise is not suitable for determining the baseline of equipment that should be ensured available by all planholders. A PREP exercise cannot test the adequacy of a national equipment cap in the isolation of a single simulated response. Nor would a series of such exercises held around the country be suitable for evaluating the sufficiency of an increased national planning standard.

High-rate Removal Technology

The Texas General Land Office stated that the addition of high-rate removal technologies is preferred to an increase in mechanical recovery systems, indicating that the surplus of mechanical equipment stationed on the Gulf Coast already exceeds the scheduled increase. We agree that mechanical stockpiles on the Gulf Coast already exceed the cap increase. However, the cap increase is necessary to raise the individual planholder's level of preparedness. The increase will raise the amount of equipment ensured available by an individual planholder, but will not necessarily raise the level of overall equipment located on the Gulf Coast. The Coast Guard acknowledges that high-rate removal technologies, such as dispersants, are valuable response options that should complement the existing mechanical recovery capabilities on the Gulf Coast. We are considering the addition of such technologies to the response plan requirements in a separate rulemaking.

Many comments suggested that high-rate removal technologies are more cost-effective and capacity-enhancing than additional mechanical recovery and advocated the inclusion of these high-rate removal technologies, rather than the addition of more mechanical recovery. Other comments suggested that the high-rate removal technologies should be included, but not at the expense of mechanical recovery capabilities. We disagree that the scheduled increases in mechanical recovery should be replaced by requirements for high-rate removal technologies. Each response technology is unique and the situations where these technologies provide an environmental benefit may vary considerably, dependant upon the circumstances of each response. The Coast Guard determined that high-rate removal technologies should augment and not necessarily replace required mechanical recovery capacities. We will consider requirements for high-rate removal technologies in a separate response cap rulemaking. A credit provision currently exists within the vessel and facility regulations for ensuring the availability of a dispersant capability (high-rate removal technology), which may be applied toward the total required recovery capacity a planholder must ensure available. Planholders may take advantage of this existing credit, as appropriate, to meet the scheduled cap increase. However, planholders should be aware that we are considering the removal of this credit from the

regulations as part of a separate rulemaking.

Recovery System Components

One comment suggested the caps review should take a "systems" approach to evaluating the need for an equipment cap increase. We agree. The Cap Review, in making its determination of the practicability of an increase, reviewed each of the components of a mechanical recovery system, including containment booms, skimming mechanisms, pumps, storage devices, and oil-water separators. The review revealed that improvements to the overall technology and operability of mechanical recovery systems support the practicability of an equipment increase.

One comment stated that the proposed increases should apply to all components of a mechanical recovery system, not just boom, skimmers, and storage devices. We agree. The cap increase as set out in 33 CFR 154.1045(m) and 33 CFR 155.1050(o) specifically addresses the requirements in 33 CFR part 154, Table 5 of Appendix C and 33 CFR part 155, Table 6 of Appendix B. These tables establish increased amounts for effective daily recovery capacity (EDRC) that must be ensured available. While EDRC is used to determine the required number of oil recovery devices (through calculations outlined in 33 CFR part 154, paragraph 6 of Appendix C and 33 CFR part 155, paragraph 6 of Appendix B), the increased EDRC values are also indirectly applied to the "system" of resources necessary to sustain those recovery devices. Title 33 CFR part 154, paragraph 9.2 of Appendix C, and 33 CFR part 155, paragraph 9.2 of Appendix B, both require that temporary storage for the recovered oil be ensured available in amounts equivalent to twice that of EDRC. Since the regulations establish a direct proportion between EDRC and temporary storage, an increase in EDRC requires that temporary storage amounts also increase by 25 percent. Title 33 CFR part 154, paragraph 9.1 of Appendix C, and 33 CFR part 155, paragraph 9.1 of Appendix B, also require that sufficient numbers of ancillary equipment (such as trained personnel, boats, spotting aircraft, sorbents, booms and other resources as necessary to support the oil recovery devices employed), are ensured available to achieve the required EDRC values. While specific amounts of such ancillary equipment are not required to be listed in the response plans, the levels of ancillary equipment should

increase as necessary to support the 25 percent increase in EDRC. It is the planholder's responsibility to ensure and certify that ancillary response resources are available to support the cap increase. We may amend the OSRO classification guidelines to include more detailed guidance concerning ancillary equipment necessary to support the cap increase in an effort to assist planholders and reviewers.

One comment stated that the cap increase should not be required for containment boom. We disagree. Title 33 CFR 154.1045(e)(3) and 33 CFR part 154, paragraph 5.6 of Appendix C (for facilities), and 33 CFR 155.1050(f)(3) and 33 CFR part 155, paragraph 5.6 of Appendix B (for vessels) indicate that sufficient amounts of containment and collection boom must be ensured available to recover the required EDRC volumes. If EDRC values increase as a result of the cap increase, then it is reasonable to assume that the amounts of containment and collection boom must increase proportionately. While specific amounts of containment and collection boom are not required to be listed in the response plans, the levels of boom ensured available should increase as necessary to support the increase in EDRC. We may amend the OSRO classification guidelines to include more detailed guidance concerning amounts of collection and containment boom necessary to support the cap increase.

Two comments stated that the cap increase should increase the amount of shoreline protection boom that must be ensured available. One comment stated that the cap increases should not apply to shoreline protection boom requirements. The cap increase, as set out in 33 CFR 154.1045(m) and 33 CFR 155.1050(o), applies specifically to the equipment requirements contained in 33 CFR part 154, Table 5 of Appendix C and 33 CFR part 155, Table 6 of Appendix B. Tables 5 and 6 do not contain any requirements to increase shoreline protection boom amounts. Therefore, the cap increase will not affect the amount of shoreline protection boom required to be ensured available. The regulatory requirements for shoreline protection boom will not increase and will remain as originally outlined in 1993 (see 33 CFR 155.1050(m) and 33 CFR part 155, Appendix B, Table 2 for vessel response plans, and by 33 CFR 154.1045(k) and 33 CFR part 154, Appendix C, paragraph 5.6 for facility response plans).

Deployment Ability

One comment stated that the Cap Review should consider the ability to deploy equipment when determining whether a cap increase is practicable. We agree. The cap requirements were originally designed in part to reflect the limitations of a planholder's ability to deploy and effectively manage equipment during the initial phase of a response. The Cap Review, in making its determination for practicability, evaluated the technological and operational feasibility of deploying increased amounts of equipment. Improvements in equipment technology and availability, as well as advances in the ability to track, deploy, and manage resources were all factors that indicate an increase is practicable.

One comment stated that training and exercising of response personnel and equipment has improved greatly since 1993 and has resulted in a far greater capability to operate and deploy such equipment effectively. We agree that personnel training and response exercises have improved the ability of today's responders to deploy and operate response equipment effectively. The improvements to personnel training and response exercises support the determination that it is practicable to increase the cap for mechanical recovery systems.

OSRO Classification

One comment stated that the 25 percent cap increase appears reasonable and should carry over to OSRO classification standards. We agree and the OSRO guidelines will be adjusted to reflect the increases in equipment required by the cap increase.

Seven comments stated the Cap Review should focus on the quality of equipment, rather than increasing the quantity. We agree that quality is a relevant issue, but one that will be addressed outside of the Cap Review process. Standards or guidelines that address the quality of response equipment would be better addressed as revisions to the OSRO classification guidelines. We will review the OSRO guidelines and consider the question of equipment quality during that process.

Two comments stated that the Coast Guard must revise the OSRO classification program before any cap increases are implemented. We disagree. Potential changes to the OSRO classification program are best addressed separately from the cap increase. Most OSRO-related issues of recent concern do not directly involve the cap increase and do not need to be addressed before the implementation of

the increase. The Coast Guard will be addressing the OSRO-related issues in workshops that are planned during the next year. The Coast Guard will announce the schedule and agenda for these workshops in a separate **Federal Register** document.

Response Database

One comment suggested that the government should capture information on personnel, vessels, and response equipment and store that information in a database that is universally available and frequently updated. We agree. Currently this information is maintained in the Response Resource Inventory (RRI). However, it is not universally available at this time. We are considering methods to improve or increase public accessibility to this database.

Costs

Two comments stated that the economic costs and benefits of all OPA 90 requirements should be considered when determining whether to increase the response caps. Four comments stated that a cap increase must consider the cost and benefits of such an increase, and is not practicable because the caps will increase costs without providing any benefits to the preparedness of a planholder to respond. And, an additional comment stated that OPA 90 prevention measures have lowered the risk of spills substantially, and the need for a cap increase should look at current risk rather than pre-OPA 90 risk.

We agree. The Coast Guard has determined that the treatment of equipment caps increases presented in the regulatory impact analysis for vessel response plans that was published in January of 1993 is legally sufficient to support actions enumerated in this notice of decision. We also agree that consideration of the economic costs and benefits of all the OPA 90 requirements, and therefore, consideration of current risk rather than pre-OPA 90 risk, is a valid approach. Accordingly, a risk analysis based on post-OPA 90 experience will be completed as part of a new economic analysis. The new economic analysis will in turn be used as a principal program decision tool for equipment caps decisions scheduled for the year 2003.

One comment stated that the Cap Review should consider the economic impacts of additional equipment requirements on OSROs. It stated that there are fewer OSROs today resulting in a reduction of the number of qualified and trained personnel

available for a major response. Additional cost burdens on the OSROs may result in OSROs going out of business. OPA 90 and resulting vessel response plan rules that were mandated by OPA 90, established a demand for response products and services as it established a captive market for them. Market-driven adjustments, such as "shakeouts" among providers that result from cost pressures, are a natural occurrence which we would expect. A threat to the availability of qualified and trained personnel does not necessarily follow. The federally established demand remains and prices are expected to be the incentive that results in a balance with the supply of qualified and trained personnel available for a major response.

One comment stated that the cap increase will force OSROs to purchase new equipment, which will reduce the amount of funds spent on training and exercises in the future. We disagree. The Cap Review has found by examination of public comment and independent research that most OSROs have already purchased the required equipment in anticipation of the scheduled increase. The majority of OSROs will not have to purchase new equipment to meet this cap increase. The Coast Guard has no evidence to suggest that funding normally spent on personnel training and response exercises will decrease as a result of equipment purchases driven by this cap increase.

Review Standard for Increase

Two comments stated that the Cap Review must show a scientific and economic justification for an increase. One comment stated that the Cap Review must prove that a net environmental benefit would result from an increase. Section 4202(a) of the OPA 90 states that response plans shall ensure the availability of private personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge. The Cap Review evaluated the scheduled increase against the standard of practicability, as required by the statute. This evaluation included an assessment of the technological, operational, and economic feasibility, and found the increase to be practicable.

Public Resources

One comment stated that the equipment ensured available by industry should not increase, but should be augmented with public resources in order to meet the demands of a worst case discharge. We disagree. Section 4202(a) of OPA 90 states that response

plans must ensure, by contract or other means approved by the President, the availability of private personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge. OPA 90 clearly states that the capability to respond to a worst case discharge should be provided by the private sector, to the maximum extent practicable. The Cap Review evaluated the scheduled increase

against the standard of practicability and found that it is practicable for the private sector to provide the increase.

Discussion of Decision

In accordance with 33 CFR 154.1045(n) and 155.1050(p), we have completed our review of the 25 percent cap increase for on-water mechanical recovery capacity, and have determined that the increase, as originally

scheduled for February 18, 1998, is practicable. This notice announces the results of the Cap Review and sets an implementation date for the scheduled increase listed in Table 1. The increase was originally scheduled for vessel response plans in 33 CFR part 155, Appendix B, Table 6, and for facility response plans in 33 CFR part 154, Appendix C, Table 5, to take effect on February 18, 1998.

TABLE 1.—1993 AND SCHEDULED INCREASES TO CAPABILITY LIMITS ON MECHANICAL RECOVERY EQUIPMENT FOR VESSELS AND FACILITIES

Geographic area	1993 Caps (BPD)			Scheduled Increase (BPD)		
	Tier I	Tier II	Tier III	Tier I	Tier II	Tier III
All except rivers and canals and Great Lakes	10,000	20,000	40,000	12,500	25,000	50,000
Great Lakes	5,000	10,000	20,000	6,250	12,500	25,000
Rivers and canals	1,500	3,000	6,000	1,875	3,750	7,500

Note: BPD, barrels per day. Table 1 corrects previously published typographical errors in Great Lakes Tier I and Tier II increases.

A team of policy and technical professionals prepared the Cap Review for the Coast Guard. This team had extensive experience in oil spill preparedness and response, USCG policy and regulatory development, and technical, operational, and policy considerations affecting mechanical recovery, dispersant, and in situ burn equipment and its use. The team examined peer-reviewed, scientific, and technical papers as well as government documents, including **Federal Register** documents, government reports, the USCG spill database (Marine Safety Information System (MSIS)), and comments to the docket regarding the proposed cap increase.

This Cap Review focused on the open-water removal of Groups I through IV oils as defined in 33 CFR 155.1020. Although the recovery of Group V oils has become a topic of interest in recent years, the recovery techniques and equipment for these oils are not well developed, and equipment caps have not been established for such oils under the current regulations (per 33 CFR 154.1047 and 33 CFR 155.1052).

In order to assess the practicability of the scheduled 25 percent increase in mechanical recovery equipment, the review evaluated the planholders' current capability to implement the oil recovery process as compared with that which existed in 1993. In doing so throughout the United States for each generic operating environment (oceans, inland, Great Lakes, rivers, and canals), primarily three important elements were considered: technological capability, commercial or market availability, and the availability of existing equipment

stocks to respond within the prescribed time limitations (Tiers I, II, and III response times).

Technological capability was assessed by reviewing advances in systems and equipment design, which have occurred over the past 5 years. This assessment evaluated improvements in oil spill tracking systems, booms and skimming devices, oil/water separation and emulsion-breaking systems, and modular, easily transported, temporary storage devices. The original caps were limited, in part, due to the difficulties in effectively tracking multiple response operations simultaneously. Visual observation by aircraft and the use of remote sensing systems enhance oil recovery by allowing more precise direction of oil removal response resources to the thickest portions of the spilled oil. Advances in aerial surveillance and other oil tracking systems have improved and, when used in conjunction with improved command and control systems, support the deployment of increased levels of response equipment effectively. Improvements in command and control, such as the increased use of an incident command system (ICS), and the establishment of a network of qualified individuals (QIs), and spill management teams (SMTs) also support the effective deployment and tracking of a greater number of response resources during the initial phases of a spill than was possible in 1993.

Conventional on-water mechanical recovery equipment, however, has not improved significantly since 1993 in terms of design efficiency or effectiveness. While improved storage

units are more readily available to support skimming units, actual recovery rates are still limited by skimmer mechanics and pump rates. Therefore, the increases in daily recovery capacity require that additional recovery equipment is ensured available. As the efficiency of most skimming devices has not improved significantly, increases in recovery capacity continue to require an additional increase in storage at the existing storage to EDRC ratio of two to one (2:1). While there has been some improvement in oil/water separation systems, this type of technology has not been widely procured and is not generally available in most recovery systems. In situations where large recovery units, such as large seagoing oil spill response vessels (OSRVs), have demonstrated that installed separation systems have improved their ability to store and recover oil, allowances have been granted through the OSRO classification program. Situations such as these, however, do not support a generic credit or offset for separator systems with respect to EDRC or storage requirements.

Commercial or market availability was assessed by reviewing equipment currently on the market in terms of representative models and their intended applications as compared with that which was available 5 years ago. The primary references for this assessment were the fourth and sixth editions of the *World Catalog of Oil Spill Response Products* (Schulze, 1993, 1997). The assessment revealed that the number of models available for each of the components of an on-water recovery system has increased. Equipment is

widely available for purchase, and a healthy level of competition exists among manufacturers capable of maintaining a current and adequate stock of response equipment at increased levels. The overall availability of new oil spill response equipment in the commercial market has improved since 1993.

The availability of existing equipment stocks for deployment to spills was assessed by reviewing nationwide inventories of major items such as booms, skimmers, skimming vessels, and temporary storage devices. Primary data was compiled using the Coast Guard National Strike Force Coordination Center's (NSFCC) Response Resource Inventory (RRI). The resulting equipment distribution and the daily recovery capacity it represented were examined for each geographic region and operating environment. The comparison of the scheduled cap increase with the existing equipment stocks available to planholders clearly indicated that planning for a response is not equipment limited. The scheduled 25 percent cap increase can easily be accommodated with the existing stocks of equipment available to planholders for each geographical region and operating environment.

The assessments of technological capability, market availability, and regional availability of existing stocks, support the determination that the scheduled increase in caps is practicable. For a more detailed explanation of these findings, the Cap Review can be viewed on the Internet at the sites listed in the **ADDRESSES** section.

Other removal technologies. The Cap Review also evaluated the following topics:

- a. Additional proposed increases for on-water mechanical removal capacity in 2003.
- b. Advances in oil tracking technology.
- c. Improvements in high-rate removal technologies such as dispersants or in situ burning.

The conclusions and recommendations of the Cap Review concerning these topics are contained within the Response Plan Equipment Cap Review document. This notice does not address these topics and makes no changes to existing regulations or policy. However, we intend to address any additional cap increases for mechanical recovery or other removal technologies in a subsequent rulemaking. The Cap Review recommendations regarding these other removal technologies should be viewed

as information only. We will consider them along with previously received public comments when formulating any subsequent rulemakings.

Dated: December 28, 1999.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-6519-3]

RIN 2060-A173

Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2000: Allocations for Metered-Dose Inhalers and the Space Shuttle and Titan Rockets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: With this action, EPA is allocating essential-use allowances for calendar year 2000 for ozone depleting substances (ODS) for use in medical devices and for use in the Space Shuttle Rockets and Titan Rockets for the year 2000 control period. Production and import of ODS for laboratory and analytical applications will be addressed in a separate rulemaking. The United States nominated specific uses of controlled ozone-depleting substances as essential for calendar year 2000 under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). The Parties to the Protocol subsequently authorized specific quantities of ODS for calendar year 2000 for the uses nominated by the United States. EPA allocates essential use allowances to an applicant for exempted production or import of a specific quantity of controlled substances solely for the designated essential purpose. These essential use allowances permit a person to obtain controlled ODS as an exemption to the January 1, 1996, regulatory phaseout of production and import.

DATES: This action is effective January 6, 2000. EPA will consider all written comments received by February 7, 2000 to determine if any change to this action is necessary.

ADDRESSES: Those wishing to notify EPA of their intent to submit adverse comments on this action should contact Erin Birgfeld, U.S. Environmental

Protection Agency, Stratospheric Protection Division, Office of Air and Radiation (6205J), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460; <birgfeld.erin@epa.gov>; (202) 564-9079 phone and (202) 565-2096 fax. Materials relevant to this rulemaking are contained in Docket No. A-92-13. The Docket phone is (202) 260-7548 and is located in room M-1500, First Floor, Waterside Mall 401 M Street, SW., Washington, DC 20460. The materials may be inspected from 8 a.m. until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Protection Hotline at (800) 296-1996 or Erin Birgfeld, U.S. Environmental Protection Agency, Stratospheric Protection Division, Office of Air and Radiation (6205J), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460; <birgfeld.erin@epa.gov>; (202) 564-9079 phone and (202) 565-2096 fax.

SUPPLEMENTARY INFORMATION:

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I. Background

Overview of the Notice of Proposed Rulemaking

The Notice of Proposed Rulemaking (NPRM) for allocating essential use allowances was published on November 2, 1999 (64 FR 59141). In the NPRM, EPA proposed allocating chlorofluorocarbon (CFCs) for use in metered dose inhalers (MDIs), and methyl chloroform for use in the Space Shuttle and Titan Rocket. EPA explained that because of additional requirements in the Clean Air Act that apply beginning in calendar year 2000, before allocating CFCs for use in MDIs, EPA must receive a determination from the Food and Drug Administration (FDA) indicating the amount of CFCs that are necessary for use in MDIs. The quantities of CFCs proposed to be allocated were the quantities that were agreed upon at the Eighth Meeting of the Parties to the Montreal Protocol. FDA's determination of the amount of CFCs that are necessary for use in MDIs, which EPA has subsequently received, is substantially lower than what was proposed in the NPRM. The allocations